S.B.CIVIL WRIT PETITION NO.375/1994

Sangarsh Samiti Pradhan Adhyapak, Madhyamik Vidyalaya District Rajsamand vs. State of Raj. & Ors.

DATE OF ORDER : 16/10/2006

HON'BLE SHRI RAJESH BALIA, J.

Mr.Rajat Dave, for the petitioner.

Heard learned counsel for the parties. The petitioner-association has filed this petition stating that the lecturers, School Education under the Rajasthan Education Subordinate Service Rules, 1971 when appointed as Head Masters, Secondary School, were given the benefit of Rule 26/26 A of the Rajasthan Service Rules while fixation of their pay on such appointment. Same benefit of fixation under Rule 26/26 A be given to members of petitioner Association on their appointment as Head Master, Secondary School from the post of Lecturer (School Education).

The factual matrix relevant for the present purpose is that by notification dated 6/9/90 the post of Lecturer (School Education) was included in Schedule F of the Rajasthan Education Service rules, 1970 w.e.f. 1.9.1988 and was excluded from the cadre of Rajasthan Education Subordinate Service Rules, 1971.

Until that time, Lecturer (School Education) was the feeder

post for promotion to the post of Head Master, Secondary School encadred in the Rajasthan Education Service Rules and consequently on such promotion from the subordinate service to the State service, the pay fixation was being done under Rule 26/26A of the Rajasthan Service Rules. With effect from the date the post of Lecturer (School Education) was elevated to the State Service, it became a post equivalent to the post of Head Master and ceased to be the feeder channel for promotion to the post of Head Master, Secondary School.

As a result of this amendment in the Rules, certain orders were made for recalling the orders of fixation of those persons who had been promoted to the post of Head Master, School Education after 1.9.1988 until notification dated 6.9.90. These orders were challenged before this Court.

In D.B.Civil Writ Petition No.5562/90 decided on 7/10/1991 the validity of the amendment in the rules was upheld.

So far as the question of allowing to retain the benefit of fixation under Rule 26/26A by Lecturer, School Education promoted after 1.9.1988 is concerned another writ petition came to be decided on 2/4/1992 (D.B.Civil Writ Petition No.5690/91, Rajasthan Shiksha Seva Parishad vs. State & Ors.) in which the Court considering the

retrospective nature of the amendment held as under:-

> ".....The post of School lecturer has been made equivalent to that of Head Master of the Secondary School and that has been made effective from 1.9.1998 and in consequence thereof Annex.5 on 17/5/1991, whereby the Director, Primary Secondary Education, Rajasthan, Bikaner has issued instructions that on account of the deletion of sub-clause (2) of Rule 23 of Rajasthan Education Service Rules, 1970 the post of Lecturer (School Education) and Head Master, Secondary School have been equated, therefore, the benefit of Rule 26 A of R.S.R. is not available to the person although it was granted to them earlier. The Validity of this Rule has been upheld but the benefits which have already been granted to the Head Masters of the Secondary Schools upto 6/9/90 cannot be allowed to be withdrawn. Benefits of the fixation which have already been granted cannot be allowed to be withdrawn retrospectively. These orders will be effective from 6.9.90 and thus no fixational benefits will be available to the Head Masters of Secondary Schools with effect from 6.9.90 but the benefits already extended under Rule 26 A of R.S.R. prior to 6.9.90 will be available to the incumbents upto 5.9.90 and they cannot be allowed to be recovered because those benefits have been extended to them under orders of the competent authority and they have already enjoyed these benefits, consequently it is held that so far as Annex.5 & 6 are concerned they will only be applicable prospectively i.e. With effect from 6.9.90 as aforesaid."

In view of the aforesaid Division Bench decision since post of Head Master, Secondary School has ceased to become promotional post for Lecturer (School Education), the benefit of Rule 26 A which was available on promotion being granted or which can be operated when a person moves from one service to another service, is not applicable.

Accordingly, the petition fails and is hereby dismissed.

(RAJESH BALIA), J.

Pankaj Baweja.